

REMARKS

The Examiner requested election of one of the following species:

Group I -- A liposomal formulation comprising HSPC:Cholesterol: DSPG in a ratio of 4:1:0.1 and methods in claims 24, 29-30, 39, 44, 49, 54.

Group II -- A liposomal formulation comprising DEPC: cholesterol in a ratio of 2:1 and methods in claims 25, 29-30, 40, 45, 50 and 55.

Group III -- A liposomal formulation comprising DEPC:cholesterol: DSPG in a ratio of 2:1::0.1 and methods in claims 26, 29-30, 41, 46, 51 and 56.

Group IV -- A liposomal formulation comprising DOPC:cholesterol in ratio of 2:1 and methods in claims 27, 29-30, 42, 47, 52 and 57.

Group V -- A liposomal formulation comprising DMPC:cholesterol:DSPG in a ratio of 2:1:0.1 and methods in claims 28-30, 43, 48, 53 and 58.

In response to this Restriction Requirement, Applicant hereby elects Group II (claims 25, 29-30, 40, 45, 50 and 55), with traverse.

If the search and examination of all the claims in an application can be made without serious burden, the Examiner **must** examine them on the merits, even though they include claims to independent or distinct inventions. M.P.E.P. 803. Applicant respectfully submits that pending claims 24-30 and 39-53 have already been searched and examined in their entirety, and the continued prosecution of claims 24-30 and 39-53 could not possibly place a serious burden on the Examiner.

At page 3 of the Office Action, in support of the requirement for election, the Examiner states that there is an examination and search burden for the patentably distinct species. This statement cannot be true. The Examiner has already performed a search and issued both a first Office action and a final Office action for claims that encompassed the subject matter of pending claims 24-30 and 39-53. Additionally, claims 24-30 and 39-53 are each independent claims that were either added or placed into independent form on 14 September 2007 in response to the first Office action. The Examiner must have searched and examined each of these independent claims in order to prepare the final Office action mailed 26 November 2007. Accordingly, the subject matter of at least claims 24-30 and 39-52 has already been fully searched and examined;

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a proper final Office action could not have been issued if this were not true. Under these facts, it is submitted that there can be no additional burden on the Examiner to continue the examination of at least claims 24-30 and 39-53 at this time. Accordingly, M.P.E.P. 803 requires that the Examiner continue the examination of claims 24-30 and 39-53 on the merits, without requirement for restriction or election. Withdrawal of the requirement for election, at least as it relates to claims 24-30 and 39-53, is appropriate and is requested.

The Examiner is invited to contact Applicant's Representative at the below-listed telephone number if there are any questions regarding this Response or if prosecution of this application may be assisted thereby.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3503. If any extensions of time are needed for timely acceptance of papers, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extension fees to Deposit Account 50-3503.

Respectfully submitted,

Gerard M. Jensen et al.

By their Representatives,

Viksnins Harris & Padys PLLP

Customer Number 53684

PO Box 111098

St. Paul, MN 55111-1098

(952) 876-4092

Date: June 19, 2008

By: /Robert J. Harris/

Robert J. Harris

Reg. No. 37,346